

Chapter 6

Plan Implementation Considerations

This chapter summarizes implementation requirements for the NED plan (Plan). It also reviews the Plan's compliance with applicable laws, summarizes public involvement and the consultation process, and proposes cost-sharing arrangements.

Implementation Requirements

Implementation of the AIP would result in an incidental take of species that may be covered by the CALFED Bay-Delta Program Multi-Species Conservation Strategy (MSCS) (CALFED, 2000).¹ Because Reclamation is a signatory agency to the MSCS, an Action Specific Implementation Plan (ASIP) was prepared for the AIP (CCWD and Reclamation, 2006a), which is included as an Appendix to the AIP EIR/EIS (CCWD and Reclamation, 2006b). As part of the environmental review process for preparation of the AIP EIR/EIS, Reclamation and CCWD coordinated with NMFS, USFWS, and CDFG to develop the ASIP, which incorporates conservation measures consistent with the MSCS. It should be noted that CDFG has required that an incidental take permit for the Project be obtained, pursuant to California Fish and Game Code section 2081(b).

The ASIP was formulated to be consistent with existing and ongoing conservation programs for CVP/SWP, and CCWD system operations. The CVP/SWP and CCWD water system is operated in compliance with the following biological opinions and operation criteria:

- 2004 NMFS Biological Opinion on the CVP Long-Term Operations, Criteria, and Plan (OCAP) (NMFS, 2004)
- 2005 USFWS Biological Opinion on the OCAP (USFWS, 2005a)
- USFWS CALFED Bay-Delta Program Programmatic Biological Opinion (USFWS, 2000)
- NMFS CALFED Bay-Delta Program Programmatic Biological Opinion (NMFS, 2000)

¹ The CALFED Program MSCS evaluates 244 species and 20 natural communities. Included within the MSCS are species identified by USFWS, NMFS, and CDFG that are covered under existing biological opinions and Natural Community Conservation Planning Act (NCCPA) determination.

- CDFG's Natural Community Conservation Planning Act (NCCPA) approval of the CALFED Bay-Delta Program MSCS (CDFG, 2000a)
- 2005 USFWS Biological Opinion on CCWD's Future Water Supply Implementation Program (USFWS, 2005b)
- 1993 NOAA Fisheries Biological Opinion on winter-run Chinook Salmon for the Los Vaqueros Project (NMFS, 1993)
- 1993 USFWS Biological Opinion for Delta Smelt for the Los Vaqueros Project (USFWS, 1993)
- 1994 Memorandum of Understanding between CDFG and CCWD for the Los Vaqueros Project (CDFG and CCWD, 1994)

Compliance with Applicable Laws, Policies, and Plans

This section summarizes AIP compliance with applicable Federal, State, and local laws and policies. Table 6-1 summarizes the required permits and actions by various Federal, State, and local agencies.

Table 6-1. Summary of Potential Permits Requirements for the Alternative Intake Project

Agency	Permits and Actions
Federal	
United States Fish and Wildlife Service	Incidental Take Permit, Section 7 Consultation
United States National Marine Fisheries Service	Section 7 Consultation
United States Army Corps of Engineers	Section 404/401 Permits
State of California	
California Department of Fish and Game	Streambed Alteration Agreement, Incidental Take Application, Consistency Determination
California Department of Transportation	Encroachment Permit
Central Valley Regional Water Quality Control Board	Notice of Intent for Dewatering, NPDES Permits 401 Certification
San Francisco Bay Area Air Quality Management District	
San Joaquin Valley Air Pollution Control District	
State Historic Preservation Office	
Local and Other Entities	
Western Area Power Administration (WAPA)	Agreement for common use of WAPA easements

Key:

NPDES = National Pollutant Discharge Elimination System

Federal Requirements

The AIP would need to comply with the requirements set forth by the Federal Endangered Species Act (ESA) and Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). USFWS and NMFS share responsibility for administering the Federal ESA. NMFS has primary responsibility for implementing the Federal ESA with respect to marine fishes and mammals, including migratory or anadromous fish species such as salmon and steelhead. USFWS has primary responsibility for other species. To comply with the Federal ESA, a biological assessment is typically prepared to analyze effects on species that are listed or proposed for listing and habitat that are designated or proposed for designation. For the AIP, the prepared ASIP is intended to act as a biological assessment pursuant to the Federal ESA, as amended.

The MSFCMA, as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), established procedures to identify, conserve, and enhance EFH. Federal agencies are required to consult with NMFS on all actions that may adversely affect EFH (MSFCMA Section 305(b)(2)). In California, three fishery management plans cover Pacific salmon, coastal pelagic species, and groundfish, respectively. NMFS, under Section 305(b)(1) of the MSFCMA, is required to provide EFH conservation and enhancement recommendations to Federal and State agencies for actions that adversely affect EFH. For the AIP, the prepared ASIP meets all the compliance requirements that have been identified for consulting with NMFS on effects to EFH, as outlined in the MSFCMA.

Construction of the AIP would also require permits from USACE because construction activities would intrude on waters of the U.S. A permit would be required to allow placing dredged or fill materials into surface waters or wetlands of the U.S. (Section 404 permit). A permit would also be required for construction work or structures in, over, or under navigable waters of the U.S. (Section 10 permit).

State Requirements

The AIP would need to comply with requirements set forth by the California ESA and the NCCPA. California ESA² requirements are similar to those of the Federal ESA. Incidental intake of listed endangered species under the CESA requires authorization from CDFG pursuant to a CDFG-approved Natural Community Conservation Plan (NCCP). Because the prepared ASIP for the AIP adheres to MSCS goals, implementation of the AIP would not require a separate incidental take permit pursuant to the California ESA for ASIP-covered species.

The NCCPA³ provides for effective protection and conservation of the State's wildlife heritage, while allowing appropriate development and growth. It

² California Fish and Game Code Sections 2050 to 2097.

³ California Fish and Game Code, section 2800, et seq.

identifies and provides for measures necessary to conserve and manage natural biological diversity within a plan area while allowing compatible use of the land. CDFG may authorize the take of any identified species, including listed and non-listed species, pursuant to Section 2835 of the NCCPA, if the conservation and management of such species is provided for in an NCCP approved by CDFG. The NED will comply with the NCCPA through the ASIP, which contains all the necessary components of a project-level NCCP for the Project action area.

Construction activities associated with the AIP would involve dewatering operations and potential discharges to surface water bodies. These activities would require permits from the Regional Water Quality Control Board. Required permits could include Notice of Intent for Dewatering, Notice of Intent for Stormwater Discharge, and National Pollutant Discharge Elimination System (NPDES) Permit 401 Certification.

Additional permits that could be required by other State agencies include an encroachment permits from the California Department of Transportation (Caltrans), and a Streambed Alteration Agreement with CDFG.

Local Plans and Policies

The AIP would require agreements for common use of Western Area Power Administration (WAPA) easements in the vicinity of the Project area to extend power service to the intake facilities.

Public Involvement, Review, and Consultation

This section summarizes the public involvement program and environmental review and consultation process for the AIP.

Summary of Public Involvement Program

Numerous outreach efforts have been undertaken to inform stakeholders about the AIP and the scoping process, and to solicit stakeholders input. These efforts included fact-sheets distributed to stakeholders, newspaper notices, news release, a Project Web Site, and public scoping meetings.

- A project fact sheet was distributed by CCWD in a mailing to 128 stakeholders in January 2005. It was also made available at public scoping meetings, and an electronic version was posted on the project Web site.
- A newspaper display advertisement and a legal notice were placed in the Contra Costa Times, the primary newspaper in CCWD's service area, during the week of February 5 to 6, 2005.

- A news release was issued by Reclamation on January 27, 2005, announcing the scoping meetings and soliciting public input on the project.
- CCWD maintains a Project Web site for the AIP that contains project public documents and updates (www.ccwater-alternativeintake.com).
- Three scoping meetings were held the week of February 13, 2005.

The outcome of the outreach activities, including the scoping meetings, is summarized in the scoping report for the AIP (Reclamation and CCWD, 2005). The report includes (1) a list of all documents/products generated for Project outreach, (2) a summary of all comments made during the scoping process, both written and verbal, and (3) a description of the issues to address in the EIR/EIS.

CCWD also met with potentially affected stakeholders during project planning including the State Water Contractors, the California Department of Water Resources, Metropolitan Water District, Santa Clara Valley Water District, Westlands Water District, and San Luis Delta Mendota Water Authority, and others. CCWD has met and communicated regularly with Victoria Island Farms throughout project planning and continues to do so. Over a dozen meetings have been held with stakeholders.

On May 3, 2006, CCWD and Reclamation published the Draft EIR/EIS for public review. The Draft EIR/EIS was distributed to the stakeholders, interested parties, and regulatory and permitting agencies and made available on both CCWD's and Reclamation's project websites. Announcements concerning the availability of the document and the dates of public hearings were made via regular and electronic mail with stakeholders, newspaper ads, and Reclamation and CCWD web pages. Three public hearings were held: June 6, 2006 in Antioch, June 7, 2006 in Sacramento, and June 8, 2006 in Concord. The written comment period closed on June 26, 2006. The Final EIR/EIS was published on October 25, 2006. It was provided to all commenters and made publicly available on October 26, 2006.

Institutional Involvement

During the process of preparation of the EIR/EIS, several meetings were held to provide an overview of the AIP and solicit input from agencies with potential interest in the AIP and/or have regulatory authority over the project. Meetings were held with representatives of the following agencies:

- Reclamation District 800
- Reclamation District 2040
- Anadromous Fish Screen Program Workgroup
- Central Valley Fish Facilities Review Team
- USACE

The Anadromous Fish Screen Program Workgroup and Central Valley Fish Facilities Review Team include representatives from the following agencies:

- Reclamation
- USFWS
- NMFS
- DWR
- CDFG
- California Bay-Delta Authority

Environmental Review and Consultation

Environmental review and consultation process for the AIP is coordinated through development of the EIR/EIS and ASIP. The Notice of Intent (NOI) and Notice of Preparation (NOP) for the EIR/EIS were released in January 2005. The Final EIR/EIS was posted in the Federal Register in November 2006. The ASIP was finalized in August 2006 to serve as the Biological Assessment necessary for the formal consultation process.

Informal consultation was initiated with Federal and State resources agencies (NMFS, USFWS, and CDFG) in June 2005 to review the potential impacts of the project on listed species and their habitat. Meetings were held with resources agencies throughout the development and planning of the AIP. The informal consultation process helped identify covered species and endangered, threatened, and proposed or candidate species that may occur in the project area, develop an appropriate approach for assessing species listed and proposed for listing as part of the Section 7 consultations required by the Federal ESA, and determine to what extent the action may affect any of the identified species, including impacts to EFH. Input and comments received during the information consultation process were used to guide development of the ASIP and the EIR/EIS. Formal ESA Section 7 consultation was initiated with NMFS and USFWS in September 2006.

NMFS Biological Opinion

In April 2007, NMFS issued a biological opinion that addresses Project effects on Federally listed endangered Sacramento River winter-run Chinook salmon, threatened Central Valley steelhead, and threatened North America green sturgeon. The biological opinion also addresses Project effects on designated critical habitat for Central Valley steelhead, Sacramento River winter-run Chinook salmon, and Central Valley spring-run Chinook salmon in accordance with section 7 of the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*).

The biological opinion concluded that the proposed action (the NED Plan) is not likely to jeopardize the continued existence of the aforementioned listed species, nor destroy or adversely modify designated critical habitat for Central Valley steelhead. An incidental take statement was also included with the

biological opinion because of the likelihood that the Project would result in incidental take of listed species from Project construction and operation.

NMFS also prepared EFH conservation recommendations for Pacific salmon and groundfish to comply with MSFCMA, as amended (16 U.S.C. 1801 *et seq.*). NMFS concluded that the project would adversely affect the EFH of Pacific salmon and groundfish, and recommended the adoption of certain terms and conditions in the incidental take statement and the ESA conservation recommendations with the biological opinion as the EFH conservation recommendations.

USFWS Biological Opinion

In April 2007, USFWS issued a biological opinion on Project effects on Federally listed as threatened Delta smelt and giant garter snake, in accordance with Section 7 of the Federal ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*).

The biological opinion concluded that the proposed action (the NED Plan) is not likely to jeopardize the continued existence of the Delta smelt or giant garter snake. It also concluded that the project will not adversely modify Delta smelt critical habitat. Because no critical habitat for the giant garter snake has been proposed or designated, none will be adversely modified or destroyed by the Project. An incidental take statement was also included with the biological opinion because of the likelihood that the Project would result in incidental take of Delta smelt, Delta smelt eggs and larvae, and giant garter snake resulting from Project construction and operation.

USFWS has also determined that the Project is not likely to adversely affect the San Joaquin kit fox due to minimal construction activity along the eastern edge of Byron Tract, which lacks suitable habitat for the San Joaquin kit fox.

CDFG Consistency Determination

In July 2007, CCWD requested the CDFG provide a determination pursuant to Section 2080.1 of the California Fish and Game Code that the biological opinions and the associated incidental take statements issued by NMFS and USFWS are consistent with the California ESA. In August 2007, CDFG issued a consistency determination for the biological opinions prepared by NMFS and USFWS for the AIP that analyzed Project effects on protected Delta smelt, Sacramento River winter-run Chinook salmon, and Central Valley spring-run Chinook salmon. CDFG determined that these biological opinions, including accompanied incidental take statements, are consistent with the California ESA for construction of the project.

However, CDFG has determined that the biological opinions, including their Incidental Take Statements, are not consistent with the California ESA for the maintenance and operation of the Project, including any impacts from the addition of a new point of diversion. This determination of inconsistency was

based on CDFG assessment that the biological opinions for the AIP do not disclose the operational impacts of the Project or identify required mitigation with sufficient specificity. CDFG also states that the biological opinions do not provide take limits, nor mitigation measures to address Project operations.

This inconsistency determination requires that an incidental take permit be obtained, pursuant to California Fish and Game Code section 2081(b). The incidental take permit must be obtained for any incidental take, by Project operations, of Delta smelt, Central Valley spring-run Chinook salmon, Sacramento River winter-run Chinook salmon, and giant garter snake. It should be noted that construction of the AIP can proceed while the incidental take permit for Project operation and maintenance is sought.

Stakeholder Issues and Areas of Controversy

Stakeholders and public comments, received during the scoping meetings, are documented in the scoping report for the AIP (CCWD and Reclamation, 2005). Issues and concerns raised by the public and stakeholders during the scoping process have been addressed through the development of the EIR/EIS and ASIP for the project.

Cost Apportionment

Cost-sharing for Federal water resources projects is based on the principle that beneficiaries pay for benefits received. For the AIP, the general principle for Federal share of costs is established by Public Law 108-361, section 107(b):

(b) Calfed Bay-Delta Program Beneficiaries- In general- The Secretary shall ensure that all beneficiaries, including the environment, shall pay for benefits received from all projects or activities carried out under the Calfed Bay-Delta Program. This requirement shall not be limited to storage and conveyance projects and shall be implemented so as to encourage integrated resource planning.

Following the allocation of Project costs to its purposes (refer to Chapter 5), these costs are apportioned to the Federal Government and non-Federal sponsor(s) based on specific project authorization and/or established Federal cost-sharing laws and regulations. Federal costs are designated as either reimbursable or non-reimbursable. Reimbursable costs are those that, through some form of up-front cost-sharing, repayment, or other financial agreement, are repaid to the Government. Non-reimbursable costs are those borne entirely by the Federal Government.

Based on existing legislation, costs allocated to water quality improvement purpose would be treated similarly to the financing of M&I water supply set

forth by the Reclamation Project Act of 1939⁴ as amended. This act provides for fully reimbursable, up-front Federal financing of M&I water supply purposes. It requires 100 percent repayment of capital costs (including IDC), as well as repayment of interest accrued over the repayment period. It also establishes that 100 percent of O&M costs are non-Federal.

Cost-sharing of AIP costs between the Federal Government and non-Federal sponsors is based on the cost allocation of Project costs using the SCRB method (presented in Chapter 5). The SCRB method allocates all Project costs to water quality improvement purpose. Approximately 93 percent of Project cost (i.e., \$98.4 million) is financed through fully reimbursable Federal cost-sharing for the AIP. This cost sharing represents the capital cost and IDC portion of the Project cost. The remaining 7 percent (i.e., \$7.3 million) of Project costs are financed by the local sponsor (i.e., CCWD). This later portion represents O&M cost.

Repayment Period

For the M&I water supplies purposes (i.e., water quality improvement purpose), Federal reimbursement costs for the AIP are considered stewardship investment repayable expenses. Stewardship investments are defined as expenses incurred by the Federal government for the purchase, construction, or major renovation of physical property owned by, or given to, state and local governments. Because all facilities and assets to be built through the AIP will be owned by CCWD, AIP Federal costs allocated to the M&I water supplies purposes are stewardship investment. Since stewardship investments are treated as expenses, the repayment period for the Federal reimbursable costs is 1 year, similar to O&M expenses. It should also be noted that stewardship investment is not a CVP feature.

Federal and Non-Federal Roles and Responsibilities

CCWD intends to construct, own, operate, and maintain the new Victoria Canal Intake. Reclamation will provide assistance to CCWD in its effort to take delivery of CVP water at the new intake. CCWD has already filed its petition to the State Water Resources Control Board for adding a new point of diversion to its own existing water rights. In addition, Reclamation has already filed a petition to add the Victoria Canal Intake to its CVP water right permits. Once a new point of diversion is added to Reclamation's existing water rights, then a new point of delivery will be established under Reclamation's long-term water service contract with CCWD. Specific roles and responsibilities of the Federal and non-Federal sponsors should be established in a Project cooperation agreement.

⁴ Chapter 418, Section 1, 53 Stat. 1187 (Aug. 4, 1939)

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